2586

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 270.

THE COMMERCIAL NATIONAL BANK, PLAINTIFF IN ERROR,

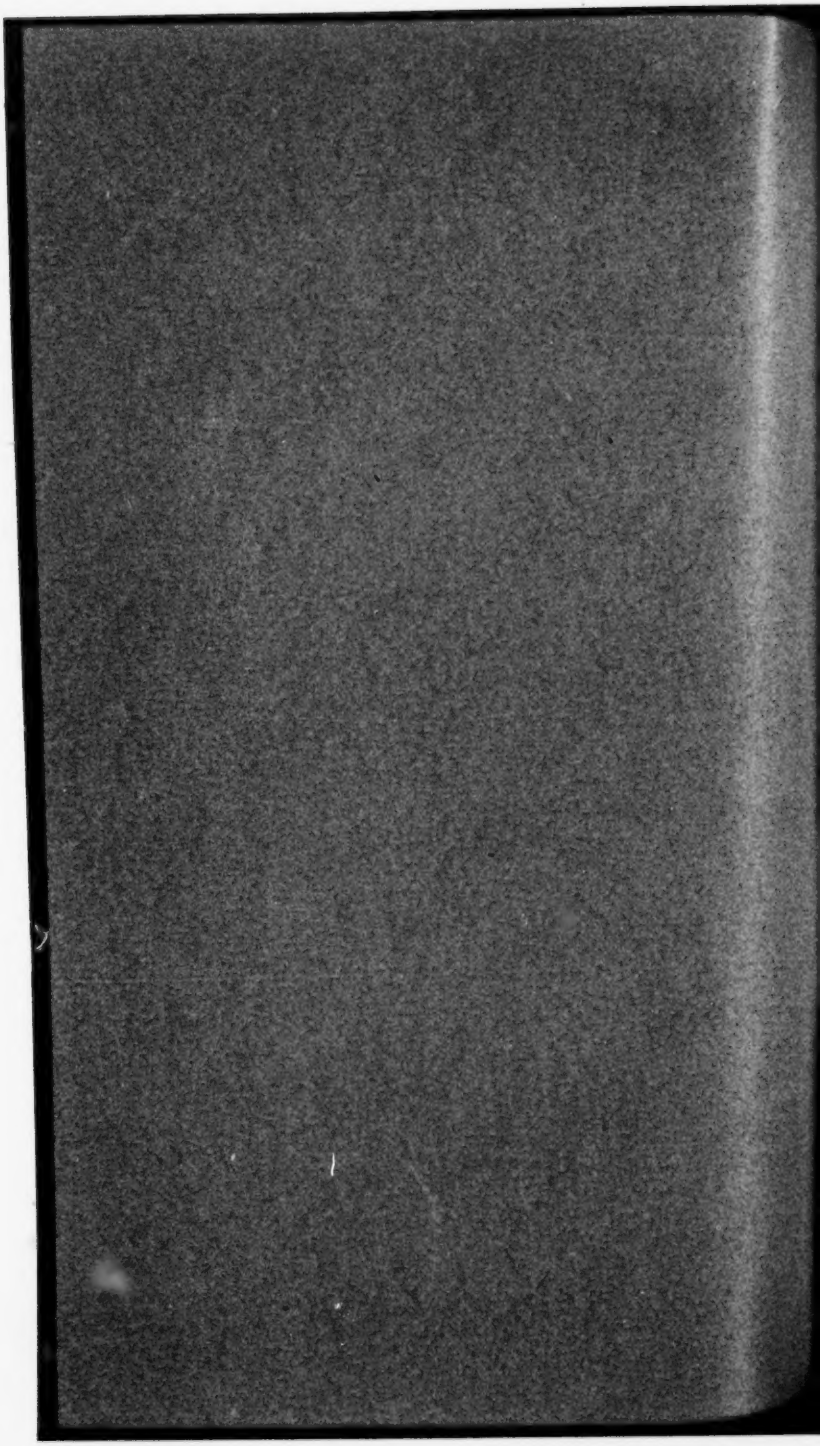
vs.

ALMA D. CHAMBERS, AS TREASURER OF WEBER COUNTY, UTAH

IN ERROR TO THE SUPREME COURT OF THE STATE OF UTAH.

FILED MAY 9, 1920.

(17,745)



(17,745.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 270.

THE COMMERCIAL NATIONAL BANK, PLAINTIFF IN ERROR,

vs.

ALMA D. CHAMBERS, AS TREASURER OF WEBER COUNTY, UTAH.

IN ERROR TO THE SUPREME COURT OF THE STATE OF UTAH.

INDEX.

	Original.	Print.
Transcript from district court	1	1
Complaint	1	1
Demurrer	9	7
Order overruling demurrer, &c	10	7
Answer	10	8
Findings of fact	12	9
Conclusion of law	19	14
Decree	19	14
Minutes of board of county commissioners, June 3, 1899	21	15
Notice of appeal	22	16
Clerk's certificate	22	16
Petition in error	23	17
Assignment of errors	23	17
Hearing and submission	26	18
Judgment	26	18
Opinion	27	19
Petition for writ of error	44	28
Order allowing writ of error	45	28
Writ of error	46	29
Citation and service	48	30
Assignment of errors	49	30
Bond	51	31
Clerk's certificate	53	32

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 1, 1900.

1 In the District Court of the Second Judicial District of the — Utah within and for the County of Utah.

COMMERCIAL NATIONAL BANK OF OGDEN, a Corporation, Plaintiff,
vs.
ALMA D. CHAMBERS, as Treasurer of Weber County, Utah, Defendant.

Complaint.

The plaintiff complains and alleges:

1. That it is now, and at all of the times herein mentioned was, a corporation duly organized and existing under and by virtue of the banking act of the United States, and as such national bank is now and has been during all of said times, conducting a general banking business at Ogden city, Weber county, Utah.

2. That the defendant is now, and at all of the times herein mentioned was, the duly elected, qualified and acting treasurer of said Weber county, Utah.

3. That on or about the 16th day of February, 1898, the cashier of plaintiff, in order to aid the assessor of said county in determin-g the value of its shares of stock, furnished a duly verified statement to said assessor, showing the amount and number of such shares of its capital stock, the amount of its surplus and all of its un-
2 divided profits, the amount of investments in real estate, and the names and places of residence of each and all of its stockholders, together with the number of shares held by each; that said statement was duly rendered and made, and was accepted by said assessor; that said cashier of plaintiff also, at said time, furnished to said assessor a statement, under his oath, setting forth specifically all the real estate owned by plaintiff on the first Monday in February, 1898, and that included therein was real estate owned by plaintiff and situated in the States of California and Idaho listed as of the approximate assessed valuation of nineteen thousand five hundred dollars; and that said assessor was satisfied with each and all of said statements.

4. That fifty thousand dollars of the capital stock of plaintiff is now, and at all of the times herein mentioned was, invested in and represented by bonds made and issued by the United States of America, and that plaintiff supplemented its said statement, so made and delivered to said assessor of Weber county, by furnishing said assessor and the board of equalization of said county, for said year, with an affidavit, duly made and sworn to by its said cashier, showing that the said fifty thousand dollars of the capital stock of plaintiff was and is so invested in and represented by said bonds of the United States as aforesaid.

5. That during the said month of February the plaintiff filed with said assessor an affidavit made by its shareholder, Edward Conant, in words and figures following, to wit:

STATE OF IDAHO, } ss:
County of Cassia, }

Edward Conant on oath says: I am a resident of Cassia county, Idaho, and a shareholder in the Commercial National Bank of Ogden. On the first Monday in February of the current
3 year, to wit: the — day of said month, there was due or owing from me the following *bona fide* debts, to wit:

To the Commercial National Bank of Ogden, Utah, in the aggregate	$2,900 00
By Conant Bros., a firm composed of myself and Henry Conant, $6,100, one-half	3,050 00
Aggregate	$5,950 00

I further on oath say that said aggregate indebtedness, and all thereof, was and is founded on an actual consideration, to wit, money loaned.

That none of the said indebtedness is barred by the statute of limitations.

EDWARD CONANT.

Subscribed and sworn to before me this 12th day of February, 1898.

JOHN F. HANSEN,
Clerk District Court.

6. That during said month plaintiff filed with said assessor an affidavit made by its shareholder H. O. Harkness of like tenor and effect, excepting that the amount due plaintiff from him was ten thousand dollars; and that at the same time plaintiff filed with the said assessor affidavits of like tenor and effect claiming deductions for local shareholders, all of which were by him allowed as to said last-named shareholders.

7. That said assessor of Weber county subsequently assessed the shares of stock of plaintiff to the respective shareholders on the basis of eighty dollars per share, as the value thereof; and plaintiff alleges that on the first Monday in February, 1898, and during the taxing year of 1898, the market value of said shares was not to exceed that amount.

8. That there has been deducted from said assessment the proportionate amount of the assessed value of the real estate of plaintiff in said Weber county (said assessed value being $27,535), but said assessor refused to deduct from said assessed value the proportionate amount of the assessed value of the real estate hereinbefore mentioned as situated outside the State of Utah, to wit, $19,500.00, and also refused to allow said stockholders, H. O. Harkness and Edward Conant, the deductions mentioned in their respective affidavits hereinbefore mentioned, or any part thereof.

4 9. That in refusing to make the aforesaid deductions the said assessor put his refusal upon the express grounds that the shareholders of plaintiff were not entitled to any deduction on

account of real estate owned by plaintiff outside of Utah, and that said shareholders, Harkness and Conant, being non-residents of Utah, were not entitled to any reduction on account of debts owing by them to plaintiff.

10. That on June 15, 1898, plaintiff filed with the board of equalization of said Weber county an affidavit in words and figures following, to wit:

The Commercial National Bank of Ogden.

JUNE 15, 1898.

To the Weber County board of equalization, Ogden, Utah:

Calling your attention to the verified statement of above bank to the assessor, as of February 7, 1898, and making said statement and the statements of the several stockholders under oath thereto appended a part of this application, and also calling your attention to attached notice of assessment, you will find that the assessor makes no deduction for the assessed value of the real estate mentioned situated outside of this State. You will also find that he makes no deductions from the value of the shares held by H. O. Harkness and Edward Conant of the amounts claimed in their respective statements under oath, heretofore mentioned.

This bank, and its officers, have made and delivered to the assessor of this county, prior to May 1, 1898, and subsequent to February 7, 1898, every statement required by law, and as required by law. In addition to this, the officers of said bank have at all times held themselves in readiness to obey all the provisions of section 2521 of the Revised Statutes of Utah, but the assessor, without any reference to said section, or the law, refused to allow any deduction for said items, or either of them, claiming that they did not
5 come within the provisions of sections 2508 and 2509 of the Revised Statutes of Utah.

Wherefore, you are requested to order said deductions.

T. D. RYAN,
Cashier Commercial National Bank of Ogden.

STATE OF UTAH, }
County of Weber, } ss:

T. D. Ryan, being sworn, on oath says: That he is cashier of the Commercial National Bank of Ogden, and makes this verification in its behalf. That he has read the foregoing statement and request, and knows the contents thereof, and that the same is true of his own knowledge.

T. D. RYAN.

Subscribed and sworn to before me this 15th day of June, A. D. 1898.

T. R. O'CONNOLLY,
Notary Public.

[SEAL.]

11. That the list of shareholders in the verified statement, as of February 7, 1898, of plaintiff to said assessor of Weber county, together with their places of residence and the number of shares held by each, was and is as follows, to wit:

Buchmiller, M.	Ogden, Utah	14⅔
Buchmiller, Maggie	Ogden, Utah	13
Buchmiller, Nellie	Ogden, Utah	13
Buchmiller, Le Roy	Ogden, Utah	13
Conant, Henry	Kelton, Utah	33⅓
Conant, Edward	Conant, Idaho	33⅓
Eccles, David	Ogden, Utah	27
Eccles Lumber Co.	Ogden, Utah	3
Fitzgerald, Thomas	Ogden, Utah	50
Guthrie, J. W.	Ogden, Utah	10
Harkness, H. O.	McCammon, Ida.	183⅓
Healy, Patrick	Ogden, Utah	40
Heywood, A. R.	Ogden, Utah	410
Heywood, L. G.	Ogden, Utah	10
Hay, George	Covina, Cal.	13⅓
Hume, R. T.	Ogden, Utah	33⅓
Jenkins, W. G.	Malad, Idaho	13⅓
King, N. M.	Sacramento, Cal.	13⅓
Loomis, J. H. & Son	Attica, N. Y.	13⅓
Malloy, Peter	Wadsworth, Nev.	13⅓
Peery, D. H.	Ogden, Utah	13⅓
Patterson, Adam	Ogden, Utah	20
Runyon, O. M.	Ogden, Utah	13

12. That the facts set out in said affidavit were and are true, and said board of equalization so recognized the same and was
6 satisfied therewith, but refused to take any action thereon on the same ground the said assessor refused to make said deductions.

13. That if deduction be made of the proportionate amount of said real estate and to said shareholders, Harkness and Conant, of the amounts claimed in their respective affidavits, the net assessable value per share and tax thereon would be as follows, to wit:

Valuation (assessed) upon plaintiff's capital stock	$80,000 00
Valuation of real estate in Weber county, Utah (tax $829.44 paid)	27,535 00
	$52,465 00
Valuation of real estate outside of Utah—paid on	19,500 00
Number of shares of capital stock 1,000	32,965 00
Net assessable value per share	32.965

Shareholder.	No. shares.	Net val.	Am't debts.	Tax.
Buchmiller, M.	14⅔	$483 50		$14 75
Buchmiller, Le Roy	13	428 55		13 07
Buchmiller, Maggie	13	428 55		13 07
Buchmiller, Nellie	13	428 55		13 07
Conant, Henry	33⅓	1,098 84	$14,050 00	
Conant, Edward	33⅓	1,098 84	5,950 00	
Eccles, David	27	980 06		27 15
Eccles Lumber Co.	3	98 89		3 02
Fitzgerald, Thomas	50	1,648 25		50 27
Guthrie, J. W.	10	329 65		10 05
Harkness, H. O.	183⅓	6,049 08	9,400 00	
Heywood, A. R.	410	13,515 65	1,200 00	375 63
Heywood, L. G.	10	329 65		10 05
Hay, George	13⅓	439 54		13 41
Hume, R. T.	33⅓	1,098 84	1,300 00	
Jenkins, W. G.	13⅓	439 54		13 41
King, N. M.	13⅓	439 54		13 41
Loomis, J. H. & Son	13⅓	439 54		13 41
Malloy, Peter	13⅓	439 54		13 41
Peery, D. H.	13⅓	439 54		13 41
Patterson, Adam	20	659 30	10,000 00	
Runyon, O. M.	13	428 55	350 00	2 40
Healy, Patrick	40	1,318 60	11,750 00	
	1,000			$612 99

7 14. That the tax on said real estate has been paid by plaintiff.

15. That on the 12th day of November, 1898, plaintiff duly tendered to defendant, as county treasurer of said Weber county, Utah, in lawful money of the United States, the total sum of $612.99 in payment of the total amount of the taxes due upon the total number of shares of plaintiff's capital stock from its shareholders, which said tender and offer of payment was then and there refused and rejected by said defendant; that thereupon and on the day aforesaid, plaintiff separately and severally duly tendered to defendant as treasurer as aforesaid, in lawful money of the United States, the sum set opposite the name of each of the stockholders of plaintiff in the column marked "tax" as shown by the statement or table hereinbefore set forth in paragraph thirteen hereof, in payment of the amount due from each of said stockholders for taxes upon the shares of stock of plaintiff owned by them, and that each and every of such tenders and offers of payment were then and there refused and rejected by said defendant.

16. That plaintiff is now, and at all times has been, ready and willing to pay to defendant, as treasurer as aforesaid, the said sum of $612.99 in satisfaction of the amount due from its shareholders, and for the payment of which it is liable, for taxes for the year 1898 upon its shares of capital stock; and plaintiff now makes it- said tender of said sum to said defendant good, and herewith pays the same into court for the use and benefit of defendant as such treasurer.

17. That the stockholders of plaintiff refuse to pay the amount of

tax upon their shares of stock demanded by defendant, and declare the same to be invalid and illegal; and that if plaintiff should pay the same it would be thereby rendered liable to a multiplicity of suits with its said stockholders, and to forfeit and lose so much of said tax so demanded by defendant as is unlawful and void.

8 18. That defendant, as such treasurer as aforesaid, is about to, and holds out and threatens that he intends to advertise as delinquent, as against plaintiff and its stockholders, the whole of said tax so claimed by him as aforesaid to be due from and payable by plaintiff, and to enforce payment of the whole thereof by plaintiff through legal proceedings, and by means of such procedure as the law provides for the enforced collection of taxes.

19. That plaintiff has no plain, adequate or complete remedy at law, and that unless the collection of said unlawful tax be restrained and enjoined plaintiff and its said shareholders will suffer and sustain great and irreparable damage and injury.

Wherefore plaintiff prays: That so *so* much of said tax levied and assessed against the shares of plaintiff's capital stock for the year 1898, in excess of the said sum of $612.99, be set aside and adjudged and decreed unlawful and void; and that defendant be required to accept said sum of $612.99, so tendered and now paid into court as aforesaid, in full satisfaction and payment of all taxes due from or payable by plaintiff and each and every of its stockholders for taxes upon the capital stock of plaintiff for the year 1898.

That said defendant be ordered and required to show cause before this court, at a time and place to be designated, why he should not be enjoined from advertising as delinquent the whole or any part of the tax levied or assessed upon or against the shares of the capital stock of plaintiff, or any part thereof, for the year 1898, and from taking any steps, action or proceedings, or using any endeavor whatsoever, to collect or effect payment of said tax for said year, or any part or portion thereof, either from plaintiff or its stockholders or any of them.

That in the meantime defendant, his agents, servants, attorneys and employees, and each of them, be restrained by order of this court, from doing, or suffering or permitting to be done, any

9 of said things; that upon the hearing of said order to show cause said defendant be enjoined from doing, or suffering or permitting to be done, any of the things above mentioned, and that upon the trial of this action said injunction be made permanent and perpetual.

For its costs of suit; and for such other and further relief as to the court may seem just and equitable in the premises.

HEYWOOD & TAIT,
Attorneys for Plaintiff.

STATE OF UTAH, }
County of Weber, } *ss:*

T. D. Ryan, being sworn, on oath says: That he is cashier of plaintiff, Commercial National Bank of Ogden, and makes this verification for and in its behalf; that he has read the foregoing com-

plaint, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters and things therein stated upon information and belief, and that as to those matters and things he believes it to be true.

T. D. RYAN.

Subscribed and sworn to before me this 1st day of December, 1898.

T. R. O'CONNOLLY,
Notary Public.

Filed December 1, 1898.

NEWTON FARR, *Clerk*,
By WILLARD HAMER, *Deputy.*

Demurrer.

(Title of Court and Cause.)

The defendant demurs to the complaint filed in this action, and for cause of demurrer alleges:

1. That the complaint does not state facts sufficient to constitute a cause of action.

2. That said complaint is uncertain in this: That it does not show the rate of taxation levied against said property, and only alleges by way of argument and inference what the total amount of taxes would be if assessed as contended for by the plaintiff.

JOSEPH S. PERRY,
County Attorney and Attorney for Defendant.

Filed December 9, 1898.

NEWTON FARR, *Clerk*,
By L. R. CAHOON, *Deputy.*

10 *Minute Entry.*

(Title of Court and Cause.)

MARCH 6, 1899.

This cause came on regularly to be heard upon the demurrer of the defendant to the amended complaint of the plaintiff herein, and now comes the court and being sufficiently advised, it is hereby ordered that the order heretofore entered herein overruling the demurrer of the defendant to the original complaint of the plaintiff, be and the same is hereby set aside and said demurrer is hereby overruled, and that the defendant do have ten days in which to answer the complaint herein; and it is hereby further ordered that the restraining order heretofore issued herein be continued in full force until the final adjudication of this cause, and it is hereby further ordered by the court, upon its own motion, that the amendments proposed to the complaint, be and the same are hereby stricken out upon the grounds of irrelevancy.

ROLAPP, *J.*

Answer.

(Title of Court and Cause.)

Comes now the defendant and for his answer to the complaint on file herein denies each and every allegation therein contained not specifically admitfed in this answer.

The defendant admits paragraphs one and two of said complaint.

Admits that the cashier of the plaintiff furnished the assessor of Weber county a statement showing the amount and number of shares of its capital stock, the amount of its surplus and undivided profits, and the names and places of residence of each and all of its stockholders together with a number of shares held by each.

Admits paragraph five of said complaint.

Admits that H. O. Harkness made and filed with said assessor an affidavit of like tenor and effect claiming a deduction of $10,000.00.

Admits paragraph seven of said complaint.

Admits that said assessor deducted from the assessed value of said stock the assessed value of the real estate of plaintiff situate in Weber county.

11 Admits that said assessor refused to allow said Harkness and Conant the deduction in their respective affidavits, or any part thereof.

Admits tenth and eleventh paragraphs of said complaint.

Admits that the tax on the real estate situate in Weber county has been paid by the plaintiff.

Admits paragraph fifteen of said complaint.

Admits all of the sixteenth paragraph.

Wherefore, defendant prays that said action be dismissed and that he recover his costs herein.

GEORGE HALVERSON,
Attorney for Defendant.

STATE OF UTAH, }
County of Weber, } ss:

Alma D. Chambers, being first duly sworn, deposes and says: That he is the defendant in the above-entitled action; that he has heard read the foregoing answer, and knows the contents thereof, and that the same *are* true of his own knowledge except as to matters and things therein stated upon information and belief, and as to those things he believes it to be true.

ALMA D. CHAMBERS.

Subscribed and sworn to before me this 13th day of March, 1899.

GEORGE HALVERSON,
Notary Public.

Filed March 13, 1899.

C. R. HOLLINGSWORTH, *Clerk,*
By L. J. HOLTHER, *Deputy.*

12 *Findings of Fact and Conclusions of Law.*

(Title of Court and Cause.)

This cause having been this day regularly called for trial before the court, sitting without a jury, Heywood & Tait appearing as counsel for the plaintiff, and George Halverson, county attorney, appearing as counsel for the defendant; and the court having heard the proofs of the plaintiff and defendant, submitting same without introducing any evidence, and the court having considered the same, and the records and papers in the case, and the arguments of the respective attorneys thereon now finds therefrom the following facts:

1. That the plaintiff is now, and at all of the times mentioned in the complaint was, a corporation duly organized and existing under and by virtue of the banking act of the United States, and as such national bank is now, and has been during all of said times, conducting a general banking business at Ogden city, Weber county, Utah.

2. That the defendant is now, and at all the times mentioned in the complaint in this action was, the duly elected, qualified and acting treasurer of said Weber county, Utah.

3. That on or about the 16th day of February, 1898, the cashier of plaintiff, in order to aid the assessor of said county in determining the value of its shares of stock, furnished a duly verified statement to said assessor, showing the amount and number of such shares of its capital stock, the amount of its surplus and all of its undivided profits, the amount of investments in real estate, and the names and places of residence of each and all of its stockholders, together with the number of shares held by each; that said statement was duly rendered and made, and was accepted by said assessor; that said cashier of plaintiff also, at said time, furnished to said assessor a statement, under his oath, setting forth specifically all the real estate owned by plaintiff on the first Monday of February, 1898, and that included therein was real estate owned by plaintiff and situated in the States of California and Idaho, listed as of the approximate assessed value of nineteen thousand five hundred dollars; and that said assessor was satisfied with each and all of said statements.

13 4. That fifty thousand dollars of the capital stock of plaintiff is now, and at all the times in said complaint mentioned was, invested in and represented by bonds made and issued by the United States of America, and that plaintiff supplemented its said statement, so made and delivered to said assessor of said Weber county, by furnishing said assessor, and the board of equalization of said county, for said year, with an affidavit, duly made and sworn to by its said cashier, showing that said fifty thousand dollars of the capital stock of plaintiff was and is so invested in and represented by said bonds of the United States as aforesaid.

5. That during the said month of February plaintiff filed with

the said assessor an affidavit made by its shareholder Edward Conant, in words and figures following, to wit:

STATE OF IDAHO, } ss:
County of Cassia, }

Edward Conant on oath says: I am a resident of Cassia county, Idaho, and a shareholder in the Commercial National Bank of Ogden. On the first Monday in February of the current year, to wit, the 7th day of said month, there was due or owing from me the following *bona fide* debts, to wit:

To the Commercial National Bank of Ogden, Utah, in the aggregate	$2,900 00
By Conant Bros., a firm composed of myself and Henry Conant, $6,100, one-half	3,050 00
Aggregate	$5,950 00

I further on oath say that said aggregate indebtedness, and all thereof, was and is founded on an actual consideration, to wit: money loaned.

That none of the said indebtedness is barred by the statute of limitations.

EDWARD CONANT.

Subscribed and sworn to before me this 12th day of February, 1898.

JOHN F. HANSON,
Clerk District Court.

14 6. That during said month plaintiff filed with said assessor an affidavit made by its shareholder H. O. Harkness of like tenor and effect excepting that the amount due plaintiff from him was ten thousand dollars; and at the same time plaintiff filed with said assessor affidavits of like tenor and effect, claiming deductions for local shareholders, all of which were by him allowed as to said last-named shareholders.

7. That said assessor of Weber county subsequently assessed the shares of stock of plaintiff to the respective shareholders on the basis of eighty dollars per share, as the value thereof; that on the first Monday in February, 1898, and during the taxing year of 1898, the market value of said shares was not to exceed that amount.

8. That there was deducted from said assessment the proportionate amount of the assessed value of the real estate of plaintiff in said Weber county (said assessed value being $27,535.00), but said assessor refused to deduct from said assessed value the proportionate amount of the assessed value of the real estate hereinbefore mentioned as situated outside of the State of Utah, to wit, $19,500, and also refused to allow said stockholders, H. O. Harkness and Edward Conant, the deductions mentioned in their respective affidavits hereinbefore mentioned, or any part thereof.

9. That in refusing to make the aforesaid deductions the said assessor put his refusal upon the express grounds that the shareholders of plaintiff were not entitled to any deduction on account of real estate owned by plaintiff outside of Utah, and that he was advised by counsel that said shareholders, Harkness and Conant, being non-residents of Utah, were not entitled to any deduction on account of debts owing by them to plaintiff.

10. That on June 15, 1898, plaintiff filed with the board of equalization of said Weber county an affidavit in words and figures following, to wit:

15 The Commercial National Bank of Ogden.

JUNE 15, 1898.

To the Weber county board of equalization, Ogden, Utah:

Calling your attention to the verified statement of above bank to the assessor, as of February 7, 1898, and making said statement and the statements of the several stockholders under oath thereto appended, a part of this application, and also calling your attention to attached notice of assessment, you will find that the assessor makes no deduction for the assessed value of the real estate mentioned situated outside of this State. You will also find that he makes no deductions from the value of the shares held by H. O. Harkness and Edward Conant of the amounts claimed in their respective statements under oath, heretofore mentioned.

This bank, and its officers, have made and delivered to the assessor of this county, prior to May 1, 1898, and subsequent to February 7, 1898, every statement required by law, and as required by law. In addition to this the officers of said bank have at all times held themselves in readiness to obey all the provisions of section 2521 of the Revised Statutes of Utah, but the assessor, without any reference to said section, or the law, refused to allow any deduction for said items, or either of them, claiming that they did not come within the provisions of sections 2508 and 2509 of the Revised Statutes of Utah.

Wherefore, you are requested to order said deductions.

T. D. RYAN,
Cashier Commercial National Bank of Ogden.

STATE OF UTAH,)
County of Weber,) ss:

T. D. Ryan, being sworn, on oath says: That he is cashier of the Commercial National Bank of Ogden, and makes this verifica-
16 tion in its behalf; that he has read the foregoing statement and request, and knows the contents thereof, and that the same is true of his own knowledge.

T. D. RYAN.

Subscribed and sworn to before me this 15th day of June, 1898.

T. R. O'CONNOLLY,
Notary Public.

[SEAL.]

11. That the facts set out in said affidavit were true. Said board of equalization, however, refused to take any action thereon on the same ground the said assessor refused to make said deductions.

12. That if deduction be made of the proportionate amount of said real estate and to said shareholders, Harkness and Conant, of the amounts claimed in their respective affidavits, the net assessable value per share and tax thereon would be as follows, to wit:

Valuation (assessed) upon plaintiff's capital stock.....	$80,000 00
Valuation of real estate in Weber county, Utah (tax $829.44 paid).....	27,535 00
	$52,465 00
Valuation of real estate outside of Utah, paid on.....	19,500 00
Number of shares of capital stock 1,000.....	32,965 00
Net assessable value per share.....	32 965

17 Shareholder.	No. shares.	Net val.	Am't debts.	Tax.
Buchmiller, M	14⅔	$483 50		$14 75
Buchmiller, Le Roy	13	428 55		13 07
Buchmiller, Maggie	13	428 55		13 07
Buchmiller, Nellie	13	428 55		13 07
Conant, Henry	33⅓	1,098 84	$14,050 00	
Conant, Edward	33⅓	1,098 84	5,950 00	
Eccles, David	27	980 06		27 15
Eccles Lumber Co	3	98 89		3 02
Fitzgerald, Thomas	50	1,648 25		50 27
Guthrie, J. W	10	329 65		10 05
Harkness, H. O	183⅓	6,049 08	9,400 00	
Heywood, A. R	410	13,513 65	1,200 00	375 63
Heywood, L. G	10	329 65		10 05
Hay, George	13⅓	439 54		13 41
Hume, R. T	33⅓	1,098 84	1,300 00	
Jenkins, W. G	13⅓	439 54		13 41
King, N. M	13⅓	439 54		13 41
Loomis, J. H. & Son	13⅓	439 54		13 41
Malloy, Peter	13⅓	439 54		13 41
Peery, D. H	13⅓	439 54		13 41
Patterson, Adam	20	659 30	10,000 00	
Runyon, O. M	13	428 55	350 00	2 40
Healy, Patrick	40	1,318 60	11,750 00	
	1,000			$612 99

12 A. That the stockholders of plaintiff refuse to pay the amount of tax upon their shares of stock demanded by defendant, and declare the same to be invalid and illegal.

13. That neither of said non-resident stockholders of plaintiff, Edward Conant and H. O. Harkness, did have at any of the times mentioned in said complaint or herein, or now have, any other credits secured, or unsecured, due or owing to them, or due or owing to any firm, copartnership or corporation of which they or either of them

are or were members, which they are, or either of them is or were, required to list in the State of Utah under the provisions of sections 2517 or 2518 of the Revised Statutes of Utah, or at all; and that neither of said non-resident stockholders, or any firm, copartnership or corporation of which they or either of them are or were members, have claimed or received the benefit of any deduction in taxation on account of the debts mentioned and set forth in their respective affidavits, hereinbefore mentioned, in any other county in the State of Utah, or in any other State, or at all.

18 14. That the tax on said real estate for the taxing year of 1898 has been paid by plaintiff.

15. That on the 12th day of November, 1898, plaintiff duly tendered to defendant, as county treasurer of said Weber county, Utah, in lawful money of the United States, the total sum of $612.99 in payment of the total amount of taxes due upon the total number of shares of plaintiff's capital stock from its shareholders, which said tender and offer of payment was then and there refused and rejected by said defendant; that thereupon and on the day aforesaid, plaintiff separately and severally duly tendered to defendant as treasurer as aforesaid, in lawful money of the United States, the sum set opposite the name of each of the stockholders of plaintiff in the column marked "Tax" as shown by the statement or table hereinbefore set forth in finding twelve, in payment of the amount due from each of said stockholders for taxes upon the shares of stock of plaintiff owned by them, and that each and every of such tenders and offers of payment were then and there refused and rejected by said defendant.

16. That plaintiff has at all times been ready and willing to pay to defendant, as treasurer as aforesaid, the said sum of $612.99 in satisfaction of the amount due from its shareholders, and for the payment of which it is liable, for taxes for the year 1898 upon its shares of capital stock; and made its said tender of said sum good, by paying the same into court for the use and benefit of defendant as such treasurer.

17. That the total tax levy, in said Weber county, Utah, for the year 1898, was thirty and one-half mills for each one dollar in valuation.

18. That the tax against the several shareholders of plaintiff as entered on the tax-roll of said Weber county, and as claimed by defendant for said year 1898, is as follows:

19 Name.	Residence.	No. shares.	Tax.
Buchmiller, M.	Ogden, Utah	14⅔	$25 29
Buchmiller, Le Roy	Ogden, Utah	13	22 41
Buchmiller, Maggie	Ogden, Utah	13	22 41
Buchmiller, Nellie	Ogden, Utah	13	22 43
Conant, Henry	Kelton, Utah	33⅓	
Conant, Edward	Conant, Idaho	33⅓	57 46
Eccles, David	Ogden, Utah	27	46 52
Eccles Lumber Co.	Ogden, Utah	3	5 14
Fitzgerald, Thomas	Ogden, Utah	50	86 18
Guthrie, J. W.	Ogden, Utah	10	17 20

Harkness, H. O.	McCammon, Id.	183⅓	316 08
Healy, Patrick	Ogden, Utah	40	
Heywood, A. R.	Ogden, Utah	410	668 34
Heywood, L. G.	Ogden, Utah	10	17 25
Hay, George	Covina, Cal.	13⅓	22 99
Hume, R. T.	Ogden, Utah	33⅓	15 85
Jenkins, W. G.	Malad, Idaho	13⅓	22 98
King, N. M.	Sacramento, Cal.	13⅓	23 00
Loomis, J. H. & Son	Attica, N. Y.	13⅓	22 99
Malloy, Peter	Wadsworth, Nev.	13⅓	23 01
Peery, D. H.	Ogden, Utah	13⅓	22 99
Patterson, Adam	Ogden, Utah	20	
Runyon, O. M.	Ogden, Utah	13	11 21
		1,000	1,471 73

19. That the State board of equalization of the State of Utah raised the valuation on personal property in said Weber county (except money) five per cent. for said year 1898.

As a conclusion of law, from the foregoing findings of fact, the court finds that plaintiff is entitled to a judgment and decree as prayed in its said complaint.

Dated this 5th day of May, 1899.

HENRY H. ROLAPP, *Judge.*

Filed May 5, 1899.

C. R. HOLLINGSWORTH, *Clerk.*

Decree.

(Title of Court and Cause.)

This cause having been regularly called and tried by the court, and the findings of fact and conclusions of law, and the decision thereon in writing having been duly rendered by the court, which are now on file in this cause, wherein judgment was awarded in favor of the plaintiff, Commercial National Bank of Ogden, and against the defendant, Alma D. Chambers, as treasurer of Weber county, Utah, on motion of Heywood & Tait, counsel for plaintiff:

It is now, therefore, hereby

20 Ordered, adjudged and decreed, that so much of the total amount of all taxes levied and assessed against the shares of the capital stock of said Commercial National Bank of Ogden, plaintiff as aforesaid, by the assessor of Weber county, Utah, for the year 1898, in excess of the sum of six hundred twelve dollars and ninety-nine cents ($612.99) be, and the same is hereby, vacated and set aside, and adjudged and decreed invalid, unlawful and wholly void and of no effect.

That defendant, Alma D. Chambers, as treasurer of Weber county, Utah, be, and he is hereby, directed, ordered and required to accept from plaintiff the said sum of $612.99, now on deposit in this court, for his use and benefit as treasurer as aforesaid, in full satisfaction, pay-

ment and discharge of all taxes levied or assessed against the shares of the capital stock of plaintiff for said year 1898, and to give plaintiff an acquittance and receipt in full therefor.

That the restraining order and temporary injunction heretofore granted and issued herein against defendant be, and the same is hereby, made perpetual; and said defendant is, and each and every of his agents, deputies, servants and attorneys are hereby perpetually enjoined and restrained from advertising as delinquent, and from in any manner whatsoever collecting, or attempting to collect any part of the tax levied or assessed upon the shares of capital stock of plaintiff, or any of them, for said year 1898 by said Weber county, Utah, in excess of said sum of $612.99, so tendered and paid into court by plaintiff as aforesaid.

That plaintiff have and recover of and from defendant its costs herein, taxed at $—, and that execution issue therefor.

Dated this 5th day of May, 1899.

HENRY H. ROLAPP, *Judge.*

Filed May 5, 1899.

C. R. HOLLINGSWORTH, *Clerk.*

Recorded decree, Book 3, page 496.

21 *Certificate.*

(Title of Court and Cause.)

STATE OF UTAH, } ss:
County of Weber, }

I, the undersigned, clerk of the district court of the county of Weber, State of Utah, do hereby certify that the foregoing is a true copy of the judgment rendered in the above-entitled action, and recorded in Judgment Book 3, of said court, at page 496.

And I further certify that the foregoing papers hereto annexed constitute the judgment-roll in said action.

Witness my hand and the seal of said court hereto set on this 5th day of May, A. D. 1899.

[SEAL.] C. R. HOLLINGSWORTH, *Clerk.*

Filed May 5, 1899.

C. R. HOLLINGSWORTH, *Clerk.*

Minutes of Board of County Commissioners of Weber County.

SATURDAY, *June* 3, 1899.

In a communication addressed to the board, County Attorney Halverson advised that he be directed to appeal the case of Commercial National Bank *vs.* Alma D. Chambers, treasurer, etc., which was decided in favor of the plaintiff by Judge Rolap in the second district court. After due consideration, on motion of Commissioner Smith, it was unanimously ordered that the county attorney be, and he is hereby instructed to appeal said case to the supreme court of

the State of Utah from the decision rendered by the second district court.

L. B. ADAMS,
Chairman of Board.

22 *Notice of Appeal.*

(Title of Court and Cause.)

To the plaintiff above named and Heywood & Tait, its attorneys, and to the clerk of said court:

You will please take notice that the defendant in the above-entitled action hereby appeals to the supreme court of the State of Utah from the judgment and decree made and entered in said district court on the 5th day of May, 1899, in favor of the plaintiff and against the defendant above named, and from the whole thereof.

GEORGE HALVERSON,
Attorney for Defendant.

Service of a copy is hereby acknowledged this 22nd day of September, 1899.

HEYWOOD & TAIT,
Attorneys for Plaintiff.

Certificate.

STATE OF UTAH, } ss:
County of Weber, }

I, the undersigned, clerk of the district court of the second judicial district of the State of Utah, in and for the county of Weber, do hereby certify that the above and foregoing are the original "complaint," filed December 1, 1898; "demurrer," filed December 9, 1898; "minute entry," dated March 6, 1899; "answer," filed March 13, 1899; "findings of fact and conclusions of law," filed May 5, 1899; "certificate to judgment-roll," filed May 5, 1899; "minute entry," made and entered June 3, 1899; "notice of appeal," filed September 22, 1899, and "petition in error," filed October 4, 1899, in the above-entitled cause now pending in this court, and that said papers are hereby transmitted to the supreme court of — State of Utah, pursuant to an appeal duly perfected in said cause by Alma D. Chambers, as treasurer of Weber county, Utah.

And I further certify that there is now on file in my office in the above-entitled cause a stipulation of the parties hereto duly waiving an undertaking on appeal herein, which said stipulation has been properly filed in said court.

In witness whereof I have hereto set my hand and affixed the seal of said court, this 4th day of October, A. D., 1899.

C. R. HOLLINGSWORTH, *Clerk,*
[SEAL.] By L. J. HOLTHER, *Deputy.*

23 *Petition in Error.*

(Title of Court and Cause.)

Comes now Alma D. Chambers as treasurer of Weber county, State of Utah, the appellant herein, and says that at the May term, 1899, of the district court of the second judicial district in and for the county of Weber, State of Utah, the respondent herein recovered a judgment, by the consideration of said court on the 5th day of May, 1899, against the appellant, in an action therein pending wherein the respondent was plaintiff and the appellant herein was defendant, a transcript of the record and journal entries in said cause are herewith filed.

And appellant further says that said record and proceedings contain the following errors prejudicial to appellant upon which the appellant relies for a reversal of said action and judgment, to wit:

1. The court errerred in overruling appellant's demurrer to the complaint on the grounds that the complaint does not state facts sufficient to constitute a cause of action.

2. The court erred in overruling appellant's demurrer to the complaint on the ground that said complaint is uncertain in this: That said complaint does not show the rate of taxation levied against said property, and only alleges by way of argument and inference what the total amount of taxes would be if assessed as contended for by the plaintiff.

3. The court erred in making its 13th finding of fact for the reason that said finding of fact is not embraced within the issues made by the pleading in said cause.

4. The court erred in making the 17th finding of fact for the reason that said finding of fact is not embraced within the issues made by the pleading in said cause.

5. The court erred in making the 18th finding of fact for the reason that said finding of fact is not embraced within the issues made by the pleadings in said cause.

6. The court erred in making the 19th finding of fact for the reason that said finding of fact is not embraced within the issues made by the pleadings in said cause.

24 7. The court erred in making the conclusion of law herein for the reason that said conclusion of law is not justified by the findings of fact made and entered in said cause.

8. The court erred in ordering judgment and decree herein in favor of respondent and against appellant for the reason that said judgment and decree is not sustained by the findings of fact made and entered in said cause.

9. The court erred in holding by said conclusion of law and the judgment and decree that the real estate owned by plaintiff outside the State of Utah should be deducted from the market value of the shares of stock belonging to the shareholders in said bank in arriving at the value of said bank stock for the purpose of taxation.

10. The court erred in holding by said conclusion of law and the

judgment and decree herein that Edward Conant and H. O. Harkness, shareholders in said bank, were entitled to deduct the debts alleged, or any of their debts, from the value of their bank stock in listing their property for taxation.

11. The court erred in holding by said conclusion of law and the judgment and decree in said cause that Edward Conant and H. O. Harkness were entitled to the deductions claimed upon making the showing to said assessor by the affidavits set out and referred to in the complaint and in not holding that the showing made was insufficient to entitle said parties to said deductions.

12. The court erred in holding by said conclusion of law and the judgment and decree entered in said cause that said shareholders in said national bank, in listing said bank shares for taxation, were entitled to deduct their debts from the value of their bank stock.

13. The court erred by said conclusion of law and the judgment and decree entered in said cause that all the taxes levied and assessed against the shares of stock in said bank in excess of $612.99 was unlawful and void, and in vacating and setting the same aside.

25 14. The court erred in not ordering judgment in favor of appellant and against the respondent.

Wherefore, appellant prays that said judgment and decree be reversed and that he be restored to all things lost under said judgment and decree.

GEORGE HALVERSON,
Attorney for Appellant.

26 In the Supreme Court of the State of Utah, Regular February Term.

FEBRUARY 21, 1900.

COMMERCIAL NATIONAL BANK, Respondent,
v.
ALMA D. CHAMBERS, Treasurer of Weber County, Appellant. } Submission.

This cause, having been heretofore argued by Mr. George Halverson in behalf of the appellant, by Hon. A. R. Heywood in reply, was submitted and by the court taken under advisement.

Title of Court and Cause.

APRIL 10, 1900.

This cause having been heretofore argued and submitted, and the court being sufficiently advised thereon, it is now here considered, ordered, and adjudged that the judgment of the court below be, and the same is hereby, reversed, with costs, and remanded with instructions to said court to set aside its decree and enter judgment in accordance with this opinion.

27 In the Supreme Court of the State of Utah.

COMMERCIAL NATIONAL BANK, Respondent,
v.
ALMA D. CHAMBERS, Treasurer of Weber County, Appellant.

BARTCH, *C. J.*:

This suit was brought by the plaintiff against the treasurer of Weber county to have declared void all taxes assessed against the bank for the year 1898 in excess of $612.99, and to have the treasurer enjoined from collecting such excess and from enforcing the collection by sale of the property assessed or otherwise. The findings of fact show that the plaintiff bank is a corporation organized and existing by virtue of the banking act of the United States, and has been and now is conducting a general banking business as a national bank in Ogden city, Weber county, Utah. For the purposes of taxation the bank's capital stock in 1898 was valued at $80,000, its real estate situate in Utah was valued at $27,535, and its real estate situate outside of this State at $19,500. In levying the tax the value of the
28 real estate situate within the State was deducted from the value of the stock, but a deduction of the *of the* value of the real estate situate without the State was refused. Likewise, the *bona fide* debts of resident shareholders were deducted from the value of the stock, and deduction refused of such debts of non-resident shareholders. The total amount of tax levied against the stock and claimed by the defendant for that year is $1,471.73. The amount offered to be paid by the plaintiff is $612.99. At the trial the court entered a decree in favor of the plaintiff, and this appeal is from that decree.

The material question is, was the respondent entitled to deductions from the stock assessment for the value of the real estate situate without the limits of this State, and to have the *bona fide* debts of non-resident shareholders deducted from the value of their stock?

The appellant insists that the court erred in allowing such deductions. Whether or not this insistence is sound must be determined by reference to the constitutional and statutory provisions relating to the subject.

In sec. 2, art. 13, const., it is provided: "All property in the State, not exempt under the laws of the United States, or under this constitution, shall be taxed in proportion to its value, to be ascertained as provided by law. The word property, as used in this article, is hereby declared to include moneys, credits, bonds, stocks, franchises and all other matters and things (real, personal and mixed) capable of private ownership; but this shall not be so construed as to authorize the taxation of the stocks of any company or corporation, when the property of such company or corporation represented by such stocks, has been taxed."

Under this provision all property in this State must be
29 "taxed in proportion to its value" except such as is exempt under the provisions of the constitution or by virtue of the Constitution of the United States. It will be observed that "credits"

and "stocks" are included within the meaning of the word "property," as used in reference to the subjects of taxation, and these two classes are separately and distinctly mentioned as being included. All kinds of credits and stocks are therefore susceptible of being taxed, except as may be otherwise provided by the fundamental law. In the same section, as will be noticed, it is provided that stocks of any company or corporation are not taxable "when the property of such company or corporation represented by such stocks has been taxed." The word "stocks" is in the plural form and, as here used, evidently means property consisting of shares in joint stock companies, whether of banking institutions or other corporations. It is referred to as a distinct species of property. The word "credits" is also in the plural form and, as here used, evidently means all debts due and owing, from whatever source, to the party whose property is to be taxed. The word, as employed in this provision, clearly refers to a species of property entirely distinct and different from that of stocks. Thus, under sec. 2 of the constitution all "credits" would be subject to taxation were it not for the limitation contained in section 3 of the same enactment, which reads: "The legislature shall provide by law a uniform and equal rate of assessment and taxation on all property in the State, according to its value in money, and shall prescribe by general law such regulations as shall secure a just valuation for taxation of all property; so that every person and corporation shall pay a tax in proportion to the value of his or her or its property: Provided, that a deduction of debts from credits may be authorized."

Here is a provision that "debts" may be deducted from "credits" in the taxation of property. To the extent, therefore, that the debts owing by any person whose property is being taxed offset the credits or debts owing to him the credits cannot be taxed, and to that extent this provision is a limitation upon section 2. Stocks, however, are not included in the limitation, they not being included within the proviso, and here we apprehend the maxim, *expressio unius est exclusio alterius*, applies. The framers of the constitution having thus referred to "credits" and "stocks" as separate species of property for the purposes of taxation and having provided different limitations as to each, they must for such purposes be treated separately and distinctly. It may further be observed that, according to the terms of section 3, every species of property in the State, except, of course, such as is exempt, must be taxed, "according to its value in money," by a uniform and equal rate of assessment and a "just valuation" which must be provided for by the legislature, and the injunction for this is "so that every person and corporation shall pay a tax in proportion to the value of his, her, or its property."

In Judge *v.* Spencer, 15 Utah, 242, where the question was whether mortgages were taxable, this court, after considering section 2 and referring to section 3, said:

"This provision made it incumbent upon the legislature to provide a uniform system by which every species of property within the State not exempt by the organic law should equally and ratably bear its due proportion of the public burden, and the legislature had no

power to exempt property not exempt under the constitution. The intention manifest from the several provisions of that instrument respecting revenue and taxation is not only that previous
31 territorial legislation as to such exemptions should be repealed, but also that no power should exist in the State government to grant exemptions other than those mentioned in the constitution."

It will also be seen upon examination that in neither of the constitutional provisions is there any direct reference, with respect to taxation, to corporate property situate without the limits of the State, nor is there any provision for the deduction of debts from stocks, and as, in the organic law, "credits" and "stocks" of corporations are treated as separate species of property and the legislature is commanded to provide by law uniform and equal rates of assessment and for just valuation of every kind of taxable property within the State, it becomes important to ascertain what the statute law respecting the matters under consideration is.

Sec. 2506, R. S., requires all property to be "assessed at its full value," agreeably to section 2 of the constitution.

Sec. 2507, *id.*, reads: "The stockholders in every bank or banking association organized under the authority of this State or of the United States, must be assessed and taxed on the value of their shares of stock therein, in the county, town, city, or district where such bank or banking association is located, and not elsewhere, whether such stockholders reside in such place or not. To aid the assessor in determining the value of such shares of stock, the cashier or other accounting officer of every such bank must furnish a verified statement to the assessor showing the amount and number of shares of the capital stock of each bank, the amount of its surplus or reserve fund or undivided profits, the amount of investments in real estate, which real estate must be assessed to said bank and taxed as other real estate, and the names and places of residence of its stockholders, together with the number of shares held by each."

32 In this case there is no contention that the tax was not assessed, nor that no statement was furnished the assessor as provided.

Sec. 2508, *id.*, reads:

"In the assessment of the shares of stock mentioned in the next preceding section, each stockholder must be allowed all the deductions and exemptions allowed by law in assessing the value of other taxable personal property owned by individual citizens of this State, and the assessment and taxation must not be at a greater rate than is made or assessed upon other moneyed capital in the hands of individual citizens of this State."

Under this provision every stockholder of a bank, whether a resident or non-resident of this State, is entitled to and must be allowed all the deductions and exemptions in the assessment of his shares as are allowed in the taxation of other taxable personal property owned by a resident citizen, and the rate must not be greater than is assessed upon other moneyed capital in the hands of such a citizen. There is, however, nothing in this provision authorizing the deduction of debts from the value of stocks in the hands either of a resident or

non-resident individual. The only deductions authorized are debts from credits. "The term 'credit-' means those solvent debts, secured or unsecured, owing to a person." Sec. 2505, subd. 6, R. S. "The term 'debts' means those secured or unsecured liabilities owing by a person." Subd. 7, *id.* Nor can the words "moneyed capital," employed in section 2508, have the effect to enlarge the meaning of the term "credits," as used in the constitution and statute, so as to include bank stocks, and then permit the deduction of debts from the value of shares in national banks; nor can those words have such an effect as to any other corporation. As we have seen, stocks
33 are not credits within the meaning of the constitution. Stock is not an indebtedness due the owner, but simply an interest in the assets or property of the corporation.

Niles *v.* Shaw, 50 Ohio St., 370.

Bridgman *v.* City of Keokuk, 72 Ia., 42.

Sec. 2509, *id.*, provides:

"In making such assessment, there must also be deducted from the value of such shares, such sum as is in the same proportion to such value as the assessed value of the real estate of such bank or banking association in which such shares are held, bears to the whole amount of the capital stock, surplus, reserve, and undivided profits of such bank or banking association."

Here is a provision which permits a deduction from the value of the shares in banking institutions of the value of the real estate, where such real estate held by the bank and represented by such shares has been taxed. Real estate so held is assessed to the bank and taxed the same as real property held by an individual is taxed to him, and therefore its value is deducted from the value of the shares so as to avoid double assessment.

This is in harmony with section 2 of the constitution above considered.

The remaining section of the Revised Statutes material in this case is 2518, which, among other things, provides that "in making up the amount of credits which any person is required to list he will be entitled to deduct from the gross amount of such credits the amount of all *bona fide* debts owing by him." This accords with section 3 of the constitution, which authorizes a deduction of debts from credits.

Thus, from an examination of the several constitutional and statutory provisions respecting the subject of taxation, it is
34 evident that the only deductions which are authorized in the assessment of the shares of stock of any national bank or other corporation organized and doing business in this State are deductions from the value of the shares of the value of the real estate, which is represented by the stock, and which has been assessed, and deductions of *bona fide* debts from credits. It is also clear that moneyed capital invested in national banks is placed precisely upon the same basis as moneyed capital invested in other banks, and that there is no unfriendly discrimination in favor of State corporations.

In the case at bar deductions were made from the value of the

stock of the value of all real estate owned by the bank which is situate within the limits of the State, but deductions for its real estate situate without the State were refused by the assessor and board of equalization, but the court below ordered that the value of the real estate situate in other States should also be deducted from the value of the stock. In this we think the court erred.

It is true the bank is a corporation organized under the banking act of the United States, but it is located in this State and is conducting its business here. All of its property, therefore, not exempt, situate or held, owned, and used within this jurisdiction is within the taxing power of this State. The power of taxation extends to every species of property which exists within the limits of the State by its authority, or which is introduced by permission of the State, unless such power be excluded expressly or by necessary implication. A national bank, although a United States institution and subject to its control, is taxable in the State where located by consent of Congress, as will hereinafter be seen.

35 The property of the respondent bank being thus within the taxing power of the State, it must be taxed, as provided by our laws, the same as other property, and, as we have seen, our constitution and statutes provide that all taxable property shall be taxed according to its value in money, which has been construed to be at its full cash value, and banking corporations are to be taxed on the value of the stock at the place where the corporation is located and not elsewhere. Now, if the value of its real estate situate in other States, where this State has no jurisdiction, is to be deducted from the value of the stock, how can the stock of the bank be taxed at its cash value? Yet stock is property within the meaning of the constitution and statute. When its real property situate within the State is taxed, then its value should be deducted from the value of the stock which represents such real property, for otherwise there would be a double assessment, in that the same property would be taxed as other real estate and also as represented by the stock. In such case all the property is still taxed at its full cash value, but this is not so as to real estate situtate in another State which cannot be taxed here. Under the power of taxation property must be treated as it exists here, without reference to that of another State, where we have no jurisdiction whatever. Stock of a bank or corporation located in this State, being property within the meaning of our revenue laws, must be treated as such.

Suppose, for instance, three-fourths of the property in value of the bank were situate in another State and its stock here was worth one hundred cents on the dollar, and for the purpose of taxation the value of such property were deducted from the value of the stock, could it be said that the stock was assessed at its cash value?

36 The shares of stock of such a corporation are subject to State control in respect to the right of taxation, and therefore every person who takes them must take them subject to such control, and it matters not whether he be a resident or non-resident. The State has a right to fix a particular situs as to such stock for the purposes of taxation, and its value for such purposes cannot be di-

minished by deducting therefrom the value of property not situated or taxable within the State and over which the State can exercise no control. The bank therefore had no right to have the value of its real estate situate without the State deducted from the value of the stock. "The true criterion, as fixed by the statute, is the true value of the stock, without reference to the question where or in what manner or nature of property or security the capital stock may be invested. Whether that be invested in real estate or other property beyond the jurisdiction of this State, the latter having control over the shares and their true value, the peculiar nature and value of the investment of the capital stock of the corporation beyond the limits of the State can form no proper subject for specific deduction or abatement from the true value of the shares of stock when presented to be assessed for purposes of taxation.

It is exclusively with the shares of stock and their true value, as representing the entire corporate assets, that the tax commissioner has to deal, and not with the nature and locality of the investment of the capital stock of the corporation, except as to the real estate of the company situate within this State."

American Coal Co. *v.* County Comm'rs, 59 Md., 185.
Dwight *v.* Mayor, etc., 12 Allen, 316.
Nevada Bank *v.* Sedgwick, 104 U. S., 111.
Kelley *v.* Rhoades, 51 Pac. Rep., 593.

37 The question remains whether the individual stockholders were entitled to have their debts deducted from the value of their stock or, rather, whether the bank was entitled to have such deductions made from the valuation of the capital stock.

It appears that individual debts owed by resident shareholders were deducted from the value of their shares, but such deductions were refused non-residents by the assessing officers. The court, however, allowed the deductions also to be made as to non-residents. Certainly if shareholders who are residing in this State are entitled to deduct their debts from the value of their shares those who are residing in another State are likewise entitled. The law permits no discrimination between the two classes of shareholders in national banks, and the distinction attempted to be made by the assessing officers would be a clear and unjust discrimination in favor of resident owners of stock, and it would be difficult to assign any good reason therefor, for the non-resident, the same as the resident, stockholder may have debts which he owes in this State, and the capital of both alike is invested in the bank. No such discrimination is tolerated by the laws of this State or of the United States. Aside from the fact, however, that no such unfriendly discrimination can be permitted, by what authority can any such deduction be made whether the stock be held by a resident or non-resident? In vain have we searched the constitution and statutory provisions of this State relating to the subject of taxation for the existence of such a power, and none has been pointed out by counsel on either side. The constitution provides for the deduction of "debts" from "credits," but, as we have seen, that provision does not au-

thorize a deduction of "debts" from "stocks." Stocks are not credits any more than credits are stocks within the
38 definition of the statute respecting the term "credit." As has already been observed, "credits" and "stocks" under our system of taxation are separate and distinct species of property. Neither one includes the other, and as the framers of our constitution have seen fit to single out and mention "credits" as the kind of property from which "debts" might be deducted, they have expressed an intention to prohibit the deduction of debts from any other species of property. The expression of the one excludes every other kind. No doubt the banking corporation in its capacity as an artificial person—as a distinct entity—has the right to have its debts contracted by it in the conduct of its banking business deducted from its credits or the moneyed capital employed, for that is necessary to determine the real value of the stock, which value amounts simply to what can be realized from the property of the corporation after its obligations are paid. This will reduce the value of the credits or capital in the amount of the debts, and as the value of the credits or capital enters into the value of the shares, the value of the shares will be proportionately reduced for the purpose of the assessment. In this way the individual shareholder receives the benefit of the deduction of debts from credits, and such is the only way in which he is entitled to any deduction from the value of his stock; but the law does not authorize the bank to deduct debts disconnected from the banking business, nor the bank or shareholder to have his individual debts deducted from the value of his shares of stock. The debts incurred in the conduct of the corporate business are deducted from the credits or moneyed capital, so that the actual value of the capital employed may be determined and the taxes levied thereon.

39 Under the system of taxation prescribed by the constitution and statutes of this State, a banking corporation, State or national, has the same immunity from excessive taxation and the same right to deductions of debts from credits as any other corporation or any private person has, but "to place the holder of national bank shares into the class of bankers and treat his shares as stocks until the net value is fixed, and then change his stock into a credit, and take him out of the class of bankers and place him into the class of private individuals so as to enable him still further to reduce his stock thus changed into a credit by deducting therefrom his legal *bona fide* debts, would be discriminating in favor of such national bank shareholder and would be giving him two chances to escape taxation while other bankers and private individuals have but one."

Chapman *v.* National Bank of Wellington, 56 Ohio St., 310.
National Bank of Wellington *v.* Chapman, 178 U. S., 205.
Dutton *v.* National Bank, 53 Kans., 440.
Bressler *v.* County of Wayne, 32 Neb., 834.
People *v.* Dolan, 36 N. Y., 59.
National Bank *v.* King County, 9 Wash., 608.

First Nat. Bank of St. Joseph *v.* Tp. of St. Joseph, 46 Mich., 526.
First Nat. Bank *v.* Chehalis County, 6 Wash., 64.
Williams *v.* Weaver, 75 N. Y., 30.
McVeagh *v.* City of Chicago, 49 Ill., 318.

Nor are the provisions of our constitution and statutes respecting taxation in conflict with section 5219 of the Rev. Stat. of the United States, which reads as follows:

"Nothing herein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the State within which the association is located; but the legislature of each State may determine and direct the manner and place of taxing all the shares of national banking associations located within the State, subject only to the two restrictions, that the
40 taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State, and that the shares of any national banking association owned by non-residents of any State shall be taxed in the city or town where the bank is located, and not elsewhere. Nothing herein shall be construed to exempt the real property of associations from either State, county, or municipal taxes, to the same exent, according to its value, as other real property is taxed."

In this section the legislature of every State is given express power to include within the subjects of taxation the "shares of national banking associations located within the State," subject, however, to the restrictions that such shares shall not be taxed at a greater rate than "other moneyed capital in the hands of individual citizens of the State," and that those owned by non-residents "shall be taxed in the city or town where the bank is located, and not elsewhere."

Examination and comparison will show that the several sections of the constitution and revised statutes of this State hereinbefore construed are entirely in harmony with the Federal statute. No purpose to discriminate against shareholders in national banks is manifest. The taxation of the shares and property of the two classes of banks, State and national, is precisely the same, and such shares and property are taxed at no higher rate than is the property of other corporations and of individuals. The assessment of all taxable property, whether of corporations or individuals, must be at its full cash value. Nor is it shown that the system of taxation pursued in this State discriminates in any way material in its practical operation against the holder of shares in national banks.

41 Under our laws such shares, the same as shares in State banks or other corporations, are known as stocks or investments in stock, and are not credits from which debts can be deducted. Such stocks are not to be assessed at a different rate in one institution than in another. Stocks in national banks, in incorporated State banks, and in unincorporated banks are all subject to the same system of taxation, and we perceive no discrimination in favor of either class, nor as against either of those classes in favor of

private taxable property. By enacting the Federal statute Congress doubtless intended to establish a national banking system, so as to obtain a secure and uniform currency for the people and facilitate the operations of the Treasury of the United States. The banks, under this system, were to be furnished with private capital. The capital, so far as it was security for their circulating notes, was to be invested in United States bonds for the protection of the Government and the people. Neither these bonds nor the shares of stock held by individuals, nor the capital, however invested, nor the banks, were taxable by the States in which the banks were located without the consent of Congress. Such consent was granted and power to tax them conferred upon the States by Congress in the statute referred to, subject to the restrictions or limitations therein contained. Those limitations were doubtless necessary to prohibit discrimination in favor of State banks and individuals doing similar business, and the imposition of burdens which would prevent private capital from seeking investment in the institutions which it was the object of the enactment to establish and promote.

"The main purpose," says Mr. Justice Matthews in Mercantile Bank *v.* New York, 121 U. S., 138, "of Congress in fixing
42 limits to State taxation on investments in the shares of national banks was to render it impossible for the State in levying such a tax to create and foster an unequal and unfriendly competition by favoring institutions or individuals carrying on a similar business and operations and investments of a like character. The language of the act of Congress is to be read in the light of this policy."

There is nothing in the Federal statute which prohibits the deduction of debts from credits when such deductions do not constitute an unfriendly discrimination against national banks; nor does the term "moneyed capital," employed in that statute, require that where, as under our system of taxation, debts may be deducted from credits, the individual debts of a shareholder in a national bank must be deducted from the value of the stock. The term "moneyed capital," as there used, does not include money which does not come into competition with the business of the bank, and debts disconnected from such business cannot be deducted from the amount of the capital; nor can the shares of stock of such a bank be treated as credits. Therefore the refusal by the assessing officers, on application of the bank, to deduct the individual debts of non-resident shareholders from the value of the stock is not an illegal discrimination against a national bank, and hence no such deduction can be enforced by the bank.

First Nat. Bank of Garnett *v.* Ayers, 160 U. S., 660.
National Bank of Wellington *v.* Chapman, 173 U. S., 205.
Aberdeen Bank *v.* Chehalis County, 166 U. S., 440.
Bank of Commerce *v.* Seattle, 166 U. S., 463.
Mercantile Nat. Bank *v.* City of New York, 28 Fed. Rep., 776.
Richards *v.* Incorporated Town of Rock Rapids, 31 Fed. Rep., 505.

43 We are of the opinion that the court erred in rendering a decree in favor of the plaintiff. Judgment ought to have been entered in favor of the defendant for costs.

The case must therefore be reversed, with costs, and remanded, with instructions to the court below to set aside its decree and enter judgment in accordance herewith.

It is so ordered.

We concur.

MINER, *J.*

BASKIN, *J.*

44 In the Supreme Court of the State of Utah.

COMMERCIAL NATIONAL BANK, Plaintiff,
vs.
ALMA D. CHAMBERS, as Treasurer of Weber County, Utah, Defendant.
} Petition for Writ of Error.

Now comes the said Commercial National Bank, plaintiff herein, and says that on or about the 10th day of April, A. D. 1900, this court entered judgment herein in favor of the defendant and against this plaintiff, in which judgment and the proceedings had prior thereunto in this cause certain errors were committed to the prejudice of this plaintiff, all of which will more fully appear from the assignment of errors which is filed with this petition.

Wherefore this plaintiff prays that a writ of error may issue in this behalf to the Supreme Court of the United States for the correction of the errors so complained of, and that a transcript of the record and proceedings and papers in this cause, duly authenticated, may be sent to the said Supreme Court of the United States.

ABBOT R. HEYWOOD,
Attorney for Plaintiff.

[Endorsed:] 1163. Com'l Nat. Bk. *vs.* A. D. Chambers. Pet. for writ of error. Filed Apr. 18, 1900. Lilburn P. Palmer, clerk supreme court Utah.

45 In the Supreme Court of the State of Utah.

COMMERCIAL NATIONAL BANK, Plaintiff,
vs.
ALMA D. CHAMBERS, as Treasurer of Weber County, Utah, Defendant.
} Order Allowing Writ of Error.

This 18th day of April, 1900, came the plaintiff, by its attorney, and filed herein and presented to the chief justice of this court its petition, with assignment of errors, showing that a Federal question was involved, and praying for the allowance of a writ of error intended to be urged by him; praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the Supreme Court

of the United States, and that such other and further proceedings may be had as may be proper in the premises.

On consideration whereof the chief justice of this court does allow the writ of error upon the plaintiff giving a bond, according to law, in the sum of one thousand dollars, which shall operate as a supersedeas bond.

G. W. BARTCH,
Chief Justice of the Supreme Court of the State of Utah.

[Endorsed:] 1163. Com'l Nat. Bk. of Ogden *vs.* A. D. Chambers. Order allowing writ. Filed Apr. 18, 1900. Lilburn P. Palmer, clerk supreme court Utah.

46 In the Supreme Court of the United States.

COMMERCIAL NATIONAL BANK, Plaintiff in Error,
versus
ALMA D. CHAMBERS, as Treasurer of Weber County, Utah, Defendant in Error.

Writ of Error to Supreme Court of Utah.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Utah, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Utah, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in *which a decision could be had in* the said suit between The Commercial National Bank, plaintiff, and Alma D. Chambers, treasurer, defendant, as aforesaid, wherein was drawn in question the validity of an authority exercised under the statutes of said State, on the ground of the same being repugnant to the laws of the United States, and the decision was in favor of such their validity, and wherein was drawn in question the construction of a clause of a statute of the United States and the decision was against the right claimed under such clause of said statute, a manifest error has happened, to the great damage of the Commercial National Bank, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties

47 aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 18th day of June, 1900, in the said Supreme Court to be then and there held, that, *in* the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, on the 18th day of April, 1900.

[Seal United States Circuit Court, District of Utah.]

JERROLD R. LETCHER,
Clerk U. S. Circuit Court, District of Utah.

[Endorsed:] 1163. Filed Apr. 18, 1900. Lilburn P. Palmer, clerk supreme court, Utah.

48 In the Supreme Court of the State of Utah.

COMMERCIAL NATIONAL BANK, Plaintiff,
vs.
ALMA D. CHAMBERS, as Treasurer of Weber County, Utah, Defendant. } Citation.

UNITED STATES OF AMERICA, *ss:*

To Alma D. Chambers, as treasurer of Weber county, Utah, and to George Halverson, Esq., his attorney, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 60 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of Utah, wherein The Commercial National Bank is plaintiff in error and you are defendant in error, and show cause, if any there be, why the judgment rendered against the said plaintiff it error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable George W. Bartch, chief justice of the supreme court of Utah, this 18th day of April, A. D. 1900.

G. W. BARTCH,
Chief Justice Supreme Court of Utah.

I hereby, this 20 day of April, 1900, accept due personal service of this citation on behalf of Alma D. Chambers, defendant in error.

GEORGE HALVERSON,
Attorney for Defendant in Error.

[Endorsed:] 1163. Citation.

49 In the Supreme Court of the United States, of October Term, in the Year of Our Lord One Thousand Nine Hundred.

COMMERCIAL NATIONAL BANK, Plaintiff in Error,
vs.
ALMA D. CHAMBERS, as Treasurer of Weber County, Utah, Defendant in Error. } Assignment of Errors.

Afterwards, to wit, on the first Monday of October, in this same term, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, comes the said Commercial

National Bank, by Abbot R. Heywood, its attorney, and says that in the record and proceedings of the supreme court of Utah aforesaid there is manifest error, in this, to wit:

1. That by the action of the taxing officers and the supreme court of Utah herein the shareholders of plaintiff in error are, contrary to the provisions of section 5219, Revised Statutes of the United States, subjected to taxation upon their respective shares at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of the State of Utah.

2. That by the action of the taxing officers and the supreme court of Utah herein there is worked against these shareholders a clear discrimination in favor of moneyed capital other than that employed in national banks.

3. That by the action of the taxing officers and the supreme court herein the shareholders of plaintiff in error were and are de-
50 nied the equal protection of the laws.

That by the record aforesaid it appears that the judgment aforesaid was given for said Chambers against the said Commercial national bank, whereas by the law of the land the said judgment ought to have been given for the said Commercial national bank against the said Chambers, and the said Commercial National Bank prays that the said judgment of the supreme court of Utah may be reversed and annulled and altogether held for nothing, and that it may be restored *of* all things which it has lost by the occasion of said judgment.

ABBOT R. HEYWOOD,
Attorney for Plaintiff in Error

[Endorsed:] 1163. Assignment of errors. Filed Apr. 18, 1900. Lilburn P. Palmer, clerk supreme court, Utah.

51 In the Supreme Court of the State of Utah.

COMMERCIAL NATIONAL BANK OF OGDEN, Plaintiff in Error,
v.
ALMA D. CHAMBERS, as Treasurer of Weber County, Utah, Defendant in Error.
} Bond.

Know all men by these presents that The Commercial National Bank of Ogden, as principal, and T. D. Ryan and Richard T. Hume, as sureties, are held and firmly bound to the defendant in error, Alma D. Chambers, in the full and just sum of one thousand dollars ($1,000.00), to be paid to the said defendant in error, Alma D. Chambers, his certain attorneys, administrators, executors, or assign; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 19th day of April, A. D. 1900.

Whereas lately, at a supreme court of the State of Utah, in a suit

depending in said court between the said parties as above, a judgment reversing the judgment of the second district court of the said State of Utah was rendered against the above plaintiff, and it having obtained a writ of error and filed a copy thereof in the office of the clerk of the Supreme Court of the United States to reverse
52 the judgment in the aforesaid suit, and a citation directed to the said Alma D. Chambers, citing and admonishing him to be and appear at a session of the Supreme Court of the United States within sixty days from the date of the said citation, to wit, the 18th day of April, 1900:

Now, the condition of the above obligation is such that if said plaintiff in error shall prosecute said writ of error to effect and answer all damages and costs if it fail to make its said plea good, then the above obligation to be void; else to remain in full force and virtue.

COMMERCIAL NATIONAL BANK OF OGDEN. [SEAL.]
T. D. RYAN. [SEAL.]
RICJARD T. HUME. [SEAL.]

Sealed and delivered in the presence of—
T. R. O'CONELLY.

STATE OF UTAH, } ss:
County of Weber, }

T. D. Ryan and Richard T. Hume, the sureties in the above bond, being first duly sworn, each for himself says—

That he is a resident and freeholder within Weber county, Utah, and worth the amount specified in said bond as the penalty thereof over and above all his just debts and liabilities, exclusive of property exempt from execution.

T. D. RYAN.
RICHARD T. HUME.

Subscribed and sworn to before me this 19th day of April, A. D. 1900.

T. R. O'CONNELLY,
Notary Public, Weber County, Utah.

The foregoing bond and security for costs was taken by me and is hereby approved this 23rd day of April, 1900.

G. W. BARTCH,
Chief Justice Supreme Court of Utah.

53 UNITED STATES OF AMERICA, } ss:
State of Utah, County of Salt Lake, }

I, Lilburn P. Palmer, clerk of the supreme court of the State of Utah, in pursuance of a writ of error, wherein The Commercial National Bank of Ogden is plaintiff in error and Alma D. Chambers, as treasurer of Weber county, Utah, is defendant in error, do return

attached hereto a transcript of the record and proceedings, together with the original citation, petition for writ, allowance of writ, writ of error, and the assignment of errors, all in and of said court and cause, to the Supreme Court of the United States, and I hereby certify that said attached transcript of said record and proceedings, opinion, and bond are full, true, and correct copies of the several originals thereof on file or of record in my office.

In witness whereof I hereunto set my hand affix the seal of the supreme court of Utah this the 26th day of April, A. D. 1900.

[Seal Supreme Court, State of Utah, Jan. 4, 1896.]

LILBURN P. PALMER,
Clerk Supreme Court of Utah.

Endorsed on cover: File No., 17,745. Utah supreme court. Term No., 270. The Commercial National Bank, plaintiff in error, *vs.* Alma D. Chambers, as treasurer of Weber county, Utah. Filed May 9, 1900.